



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

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SECRETARIAT

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SENSITIVE

Brett G Kappel, Esq
Vorys, Sater, Seymour and Pease LLP
1828 L Street, Northwest
Eleventh Floor
Washington, DC 20036-5109

RE MUR 5549
Stephen Adams

Dear Mr Kappel

Based on a complaint filed with the Federal Election Commission on September 28, 2004, and information supplied by your clients, including Stephen Adams, as well as information ascertained in the normal course of carrying out its supervisory responsibilities, the Commission, on May 23, 2005, found that there was reason to believe Stephen Adams violated 2 U S C §§ 434(g)(2)(A) and 441d(a)(3)

The Office of the General Counsel is now prepared to recommend that the Commission find probable cause to believe that these violations have occurred

The Commission may or may not approve the General Counsel's recommendation Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote on whether there is probable cause to believe a violation has occurred

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days

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Mr Brett G Kappel
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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement

Should you have any questions, please contact J Cameron Thurber, the attorney assigned to this matter, at (202) 694-1650

Sincerely,

Lawrence H Norton
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Stephen Adams

MUR 5549

GENERAL COUNSEL'S BRIEF

I. INTRODUCTION

On May 23, 2005, the Federal Election Commission ("Commission") found reason to believe that Stephen Adams ("Adams") violated 2 U S C § 434(g)(2)(A) by failing to file timely a report of a \$1,000,000 independent expenditure for a billboard advertising campaign, and violated 2 U S C § 441d(a)(3) by failing to include proper disclaimers on his advertising. Based on a review of the facts and circumstances of Adams' failures to file timely the report of his independent expenditure and include proper disclaimers on his advertising, this Office is prepared to recommend that the Commission find probable cause to believe that Adams violated 2 U S C §§ 434(g)(2)(A) and 441d(a)(3).

II. ANALYSIS

A. Background Information

Between September 7 and November 2, 2004, Adams sponsored advertisements expressly advocating the reelection of President Bush that began displaying on billboards throughout Michigan, Pennsylvania, Wisconsin and South Carolina. Response of Stephen Adams, Adams Outdoor Advertising, Inc., Adams Outdoor Advertising, LP, and AOA Holding, LLC, dated Nov 15, 2004 ("Response") at 9-10 and Attachments 6, 7 thereto, Aff of Stephen Adams ("Adams Aff"), Nov 12, 2004, at ¶ 13, Aff of Randall Romig ("Romig Aff"), Nov 12, 2004, at ¶¶ 18, 21-2. The advertising consisted of different displays of "catch phrase[s]" such as

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1 "Defending Our Nation," "It's About Our National Security," "A Nation Secure," "One Nation
2 Under God," and "Boots Or Flip-Flops?" Response at 4 and Attachment 1 thereto (emphasis in
3 original) These phrases "appeared in white type on a blue background immediately above the
4 campaign slogan 'BushCheney04' superimposed on the red and white stripes of the American
5 flag " Response at 4 and Attachment 1 thereto Adams paid \$1,000,000 for the billboard
6 advertising campaign Response at 9-11 and Attachment 8 thereto, Adams Aff at ¶¶ 4, 13,
7 Romig Aff at ¶¶ 20, 22

8 The advertising originally bore a disclaimer that read, "Personal message paid for and
9 sponsored by Stephen Adams " Response at 13-4 After receiving the complaint, Adams
10 contacted counsel, who advised that the disclaimers failed to state that the advertising was not
11 authorized by the Bush campaign and failed to contain contact information for Adams, as
12 required by 2 U S C § 441d(a)(3) Adams states he instructed that "immediate action" be taken
13 to post revised disclaimers "as soon as possible and, if at all possible, before election day "
14 Romig Aff at ¶¶ 23-4, 26, Adams Aff at ¶¶ 14-7 Revised disclaimers stating "Paid for by
15 Stephen Adams and not authorized by any candidate or candidate's committee Contact
16 sadams@adamsoffice.net" were reportedly posted "[b]y November 2, 2004," at a cost to Adams
17 of \$14,545 27 Romig Aff at ¶ 28, Adams Aff at ¶ 17, Response at 16

18 Adams filed an FEC Form 5 disclosing his \$1 million payment as an independent
19 expenditure on October 28, 2004

20 **B. Adams Failed to File Timely his Independent Expenditure Report**

21 "A person that makes or contracts to make independent expenditures aggregating
22 \$10,000 or more at any time up to and including the 20th day before the date of an election shall
23 file a report describing the expenditures within 48 hours " 2 U S C § 434(g)(2)(A), 11 C F R

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1 § 109 10(c)¹ The report must be made either on an FEC Form 5, or by signed statement if the
2 person is not otherwise required to file electronically, and received by the Commission by "11 59
3 p m Eastern Standard/Daylight Time on the second day following the date on which a
4 communication is publicly distributed or otherwise publicly disseminated " 11 C F R
5 § 109 10(c)

6 Because the advertising campaign commenced as scheduled on September 7, 2004, see
7 Response at 10, Adams was required to file his independent expenditure report such that the
8 Commission received it no later than 11 59 p m Eastern Standard Time on September 9,
9 2004 Therefore, Adams' FEC Form 5 filing regarding his \$1 million expenditure on October
10 28, 2004 was more than one-and-a-half months late Thus, this Office is prepared to recommend
11 that the Commission find that there is probable cause to believe that Stephen Adams failed to file
12 timely an independent expenditure report, in violation of 2 U S C § 434(g)(2)(A)

13 C. The Advertisements Contained Inadequate Disclaimers

14 Disclaimers on communications paid for by independent expenditures must "clearly state
15 the name and permanent street address, telephone number or World Wide Web address of the
16 person who paid for the communication and state that the communication is not authorized by
17 any candidate or candidate's committee " 2 U S C § 441d(a)(3) The Response concedes that
18 the advertisements in question originally did not contain Adams' permanent street address,
19 telephone number or World Wide Web address and failed to state that they were not authorized

¹ An "independent expenditure" is an expenditure by a person expressly advocating the election or defeat of a clearly identified person that is not made in concert or cooperation with or at the suggestion of the clearly identified candidate, the candidate's authorized political committee, or their agents, or a political party committee and its agents 2 U S C § 431(17), see 11 C F R § 100 16(a) Adams admits he made an independent expenditure in paying for the advertising campaign Response at 3-6, Adams Aff at ¶¶ 4-11

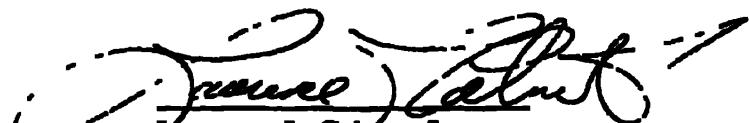
by any candidate or candidate's committee Response at 13-7, see Adams Aff at ¶ 15-7, Romig Aff at ¶ 23-8 Thus, this Office is prepared to recommend that the Commission find that there is probable cause to believe that Stephen Adams failed to include proper disclaimers on his billboard advertisements, in violation of 2 U S C § 441d(a)(3)

III. GENERAL COUNSEL'S RECOMMENDATIONS


- 1 Find probable cause to believe Stephen Adams violated 2 U S C § 434(g)(2)(A) by failing to file timely a report of an independent expenditure
- 2 Find probable cause to believe Stephen Adams violated 2 U S C § 441d(a)(3) by failing to post proper disclaimers on the advertisements he purchased as an independent expenditure

3/2/06
Date


Lawrence H. Norton
General Counsel


Lawrence L. Calvert, Jr.
Deputy Associate General Counsel
for Enforcement


Susan L. Lebeaux
Assistant General Counsel


J. Cameron Thurber
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